

HUMAN SERVICES BOARD

In re) Fair Hearing No. N-03/08-96
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 Appeal of)

The petitioner appeals the decision by the Department for Children and Families, Economic Services terminating her eligibility for Food Stamps. The issue is whether the petitioner's household has countable resources in excess of the program maximum. The following facts are not in dispute.

1. In February 2008 the Department notified the petitioner that she was no longer eligible for Food Stamps due to a bank account in the petitioner's name that at that time contained \$19,914.

2. At a status conference held on March 26, 2008, the petitioner represented that the account in question was established by her daughter's grandmother to provide for her daughter's college education. The petitioner represented that even though the account was in her name, she considered her access to it to be restricted. The petitioner further represented that when she received Food Stamps in 2000 the

Department had determined that the account was exempt as a resource. Based on these representations the Department agreed to continue the matter to allow the petitioner to create an irrevocable trust for her daughter's future education needs.

3. At a telephone status conference held on May 12, 2008, the Department and an attorney appearing in the petitioner's behalf represented that the parties were attempting to reach a stipulation of facts regarding any remaining legal issues. Subsequently, the petitioner's attorney withdrew from the case.

4. At a status conference held on June 11, 2008 the petitioner represented that she did not want to create an "educational trust fund" for her daughter because of the legal fees involved, and because she did not want to limit her daughter's access to the funds solely for educational use.

5. Despite the alleged intent of the donor of the money in question, after consulting with an attorney the petitioner does not allege that the bank account in its present form is not legally and physically accessible to her and/or her daughter in its entirety.

ORDER

The Department's decision is affirmed.

REASONS

The resource limit for Food Stamp households is \$2,000. W.A.M. § 273.8(b). Under the regulations, all "liquid" bank accounts held by any household member are defined as a resource. *Id.* § 273.8(c)(1). All such resources are counted unless specifically "excluded" under § 273.8(e). Included in the list of excluded resources under that section is the following:

(8) Resources having a cash value which is not accessible to the household, such as, but not limited to irrevocable trust funds. . . Any funds in a trust or transferred to a trust. . .shall be considered inaccessible to the household if:

(i) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(ii) The trustee administering the funds is either:

(A) A court, or an institution, corporation, or organization which is not under the direction, or ownership of any household member; or (B) an individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meets the requirements of this paragraph;

(iii) Trust investments made on behalf of the trust do not directly involve or assist any business or

corporation under the control, direction, or influence of a household member; and

(iv) The funds held in irrevocable trust are either;

(A) Established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or (B) established from non-household funds by a non-household member.

In light of the above provisions there is no question that the Department correctly determined that the bank account in question was a countable resource. The petitioner is still free to negotiate with the Department over the establishment of an irrevocable trust that meets the requirements of § 273.8(e)(8), *supra*.¹ Unless and until she does so, however, the Board is bound to affirm the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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¹It appears under the regulations that the petitioner could choose the length of time the trust would be unavailable to her daughter.